

CRM-16147-2023 in/and
CRM-M-16352-2023

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2023:PHHC:060669

109 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-16147-2023 in/and
CRM-M-16352-2023
Date of Decision: 21.04.2023

Satbir Singh @ Satvir Singh and others

..... Petitioners

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Lakhwinder Singh Mann, Advocate
for the petitioners.

HARSH BUNGER J.

CRM-16147-2023:

Present application is filed for placing on record relevant zimni
orders as Annexure P-9.

For the reasons mentioned in the application, the relevant zimni
orders are taken on record as Annexure P-9, subject to all just exceptions.

Application is accordingly disposed of.

CRM-M-16352-2023:

Petitioners have filed the present petition under Section 482 of
the Code of Criminal Procedure for setting aside impugned order dated
22.03.2023 (Annexure P-7) passed by the Court of Additional Sessions
Judge, Fatehgarh Sahib, declaring the petitioners as proclaimed offenders in
case DDR No.28 dated 02.01.2019 (Annexure P-2) under Sections 148, 149,

323, 325, 427 & 452 of the Indian Penal Code and Sections 3(1)(N)(O), 3(2)(V)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, registered in case FIR No.3 dated 02.01.2019 (Annexure P-1), under Sections 148, 149, 323, 325 & 341 of the Indian Penal Code and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, at Police Station Fatehgarh Sahib.

2. Learned counsel for the petitioners submits that case FIR No.3 dated 02.01.2019 (Annexure P-1) was got registered by one Harinder Pal Singh against Kuldeep Singh and other accused persons by alleging that they had given beatings to him and as a counter blast to the same, the aforesaid Kuldeep Singh got registered case DDR No.28 dated 02.01.2019 (Annexure P-2) against the petitioners herein and other co-accused, including Harinder Pal Singh, by alleging that they had entered into the house of Kuldeep Singh and gave beatings to him and also uttered casteist remarks. Learned counsel for the petitioners states that the matter was investigated by the police, wherein the petitioners were declared innocent and they were kept in Column No.2 of the Challan.

3. Learned counsel for the petitioners submits that after the presentation of challan, Kuldeep Singh appeared as a witness in case DDR (Annexure P-2) and his examination in chief was recorded as PW-1, wherein he reiterated the same story as stated by him in his statement recorded under Section 161 of the Code of Criminal Procedure. Thereafter, upon filing of an application under Section 319 of the Code of Criminal Procedure, the trial Court summoned the present petitioners vide order dated 30.07.2022 (Annexure P-4).

petitioners were not aware of the summoning order dated 30.07.2022 (Annexure P-4), accordingly on account of their absence before the trial Court, the proclamation warrants were issued against them vide order dated 07.02.2023 (Annexure P-6) passed by the Court of Additional Sessions Judge, Fatehgarh Sahib, while observing as under:

“Therefore, let fresh proclamation warrants of additional accused persons namely Ranbir Singh @ Bagga Kohi Wala, Jugraj Singh, Satvir Singh, Jaspreet Singh @ Hira, Lakhwinder Singh @ Lakha be again issued to cause the appearance of the additional accused persons namely Ranbir Singh @ Bagga Kohi Wala, Jugraj Singh, Satvir Singh, Jaspreet Singh @ Hira, Lakhwinder Singh @ Lakha before this court on 22.03.2023. Ahlmad is directed to draw the proclamation warrants in accordance with the provisions of Section 82 (1) of Cr.P.C. and handover the same to the serving constable to be published in accordance with section 82(2) of Cr.P.C. Serving constable will publish the proclamation well before 20.02.2023 and appear before this court on 20.02.2023 to give his statement in accordance with section 82(2) of Cr.P.C.”

5. It is further contended by learned counsel for the petitioners that on the adjourned date, i.e. 22.03.2023, the Court of Additional Sessions Judge, Fatehgarh Sahib declared the petitioners as proclaimed offenders. Relevant extract of order dated 22.03.2023 (Annexure P-7) is reproduced as under:-

“Despite repeated calls additional accused namely Ranbir Singh @ Bagga Kohi Wala, Jugraj Singh, Satvir Singh, Jaspreet Singh @ Hira, Lakhwinder Singh @ Lakha have failed to put in appearance. Proclamation proceedings were initiated against the accused persons vide order dated 07.02.2023. In compliance thereof proclamation warrants in

accordance with the provisions of 82 (2) of the Cr.P.C. was issued and executed on 20.02.2023. The accused had been notified and provided clear cut period of more than 30 days to enter appearance before the court. Having failed to appear despite issuance of a valid proclamation in accordance with the provisions of 82 of Cr.P.C., the additional accused persons namely Ranbir Singh @ Bagga Kohi Wala, Jugraj Singh, Satvir Singh, Jaspreet Singh @ Hira, Lakhwinder Singh @ Lakha are hereby declared as proclaimed offenders. An intimation in this regard be also sent to the SHO P.S. Fatehgarh Sahib to take proceedings under Section 174-A of IPC against the additional accused persons namely Ranbir Singh @ Bagga Kohi Wala, Jugraj Singh, Satvir Singh, Jaspreet Singh @ Hira, Lakhwinder Singh @ Lakha.”

6. It is argued by learned counsel for the petitioners that the petitioners have been wrongly declared as proclaimed offenders by the Court of Additional Sessions Judge, Fatehgarh Sahib vide aforesaid order dated 22.03.2023 (Annexure P-7), and that too without complying with the mandatory provisions as envisaged under Section 82 of the Code of Criminal Procedure, wherein the mandatory period of 30 days is required to be provided to the accused and in case such period is not provided then the same cannot be said to be the compliance of the provisions of Section 82 *ibid*. While referring to order dated 07.02.2023 (Annexure P-6), whereby the proclamation was issued against the petitioners by the Court of Additional Sessions Judge, Fatehgarh Sahib, it is submitted that the *Ahlmad* was directed to draw the proclamation warrants, in accordance with the provisions of Section 82(1) of the Code of Criminal Procedure, and hand over the same to the serving Constable to be published in accordance with Section 82(2) *ibid* and the serving Constable was further directed to publish

the proclamation well before 20.02.2023 and he was also directed to appear before the Court on 20.02.2023 to give his statement in accordance with Section 82(3) *ibid*.

6.1 Thereafter, learned counsel for the petitioners has further referred to order dated 22.03.2023 (Annexure P-7) to submit that the proclamation proceedings were executed on 20.02.2023. Learned counsel states that the Month of February contains 28 days. The proclamation was executed on 20.02.2023 to appear before the trial Court on 22.03.2023, accordingly both the dates, i.e. 20.02.2023 and 22.03.2023, were required to be excluded while computing the period of 30 days, in terms of Section 9 of the General Clauses Act. The said Section 9 *ibid* is reproduced herein below:

“9. Commencement and termination of time.

(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.”

6.2 A further reference is made to the provisions of Section 82 of the Code of Criminal Procedure, which specifies that the proclamation requiring a person to appear at a specified place and time could not be less than 30 days from the date of publishing such proclamation. The Section 82 *ibid* is reproduced herein below:

“82. Proclamation for person absconding.

1. If any Court has reason to believe (whether after taking

evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

2. The proclamation shall be published as follows

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court- house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

3. A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub- section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.”

6.3 It is thus contended that since the order directing proclamation mandating the petitioners to appear before the trial Court was made on 07.02.2023 and the proclamation was actually carried out on 20.02.2023 to appear before the trial Court on 22.03.2023 and the date of commencement and the last date of the said period, being required to be excluded, accordingly a clear period of 30 days cannot be said to be provided to the petitioners, and rather the same was done after a period of only 29 days,

which cannot be termed as compliance of the provisions contained under

Section 82 of the Code of Criminal Procedure. In support of his contentions, learned counsel for the petitioners has placed reliance upon an order passed by a co-ordinate Bench of this Court in CRM-M-54283-2021 and other connected matters, decided on 16.05.2022.

7. Mr. Subhash Godara, Additional Advocate General, Punjab, appears on behalf of the respondent/State, in pursuance of advance copy of paper book having already been supplied to him.

8. At this stage, Mr. Swarn Singh Tiwana, Advocate appears on behalf of the complainant.

9. Learned State counsel and learned counsel appearing for the complainant have submitted that the petitioners were very well aware of the summoning order dated 30.07.2022 (Annexure P-4). It is further submitted that even though the petitioners failed to appear before the trial Court, however, they did not seek bail in those proceedings before the said Court, accordingly, no fault can be found with order dated 22.03.2023 (Annexure P-7), declaring the petitioners as proclaimed offenders. However, learned State counsel as well as learned counsel appearing for the complainant could not dispute the applicability of Section 9 of the General Clauses Act, 1897, nor they have referred to any judgment or statutory provisions indicating that the aforesaid dates too are required to be included towards computation of 30 days.

10. While replying to the aforesaid submissions, learned for the petitioners has referred to *zimni* order dated 14.12.2022 passed by the Court of Additional Sessions Judge, Fatehgarh Sahib, wherein the following observation was made by the trial Court:-

*Non bailable warrants of additional accused persons namely **Jaspreet Singh @ Hira, Lakhwinder Singh @ Lakha, Satvir Singh, Ranbir Singh @ Bagga Kohi Wala, Jugraj Singh** again received back served through their family members, but that amount to not service, therefore, fresh non bailable warrants of additional accused persons namely **Jaspreet Singh @ Hira, Lakhwinder Singh @ Lakha, Satvir Singh, Ranbir Singh @ Bagga Kohi Wala, Jugraj Singh**, be again issued for 18.01.2023.*

11. I have heard learned counsel for the parties and perused the paper book.

12. It is a well settled principle of law that the provisions contained under Section 82 of the Code of Criminal Procedure are mandatory in nature and they have to be adhered to strictly, according to which, a clear cut period of 30 days has to be provided to the accused for appearance before the concerned Court. However in the instant case, considering the fact that the Month of February, 2023 contained 28 days and the proclamation actually having been carried out on 20.02.2023 for appearance before the trial Court on 22.03.2023, and after deducting the two dates, i.e. 20.02.2023 and 22.03.2023, in terms of Section 9 of the General Clauses Act, it is manifest that a clear period of 30 days was not provided to the petitioners to appear before the trial Court, and the same cannot be termed as compliance of Section 82 of the Code of Criminal Procedure.

13. In view of the aforesaid discussion, impugned order dated 22.03.2023 (Annexure P-7) passed by the Court of Additional Sessions Judge, Fatehgarh Sahib, declaring the petitioners as proclaimed offenders in case DDR No.28 dated 02.01.2019 (Annexure P-2) is hereby set aside.

- 14.** Present petition is accordingly disposed of.
- 15.** All pending application(s), if any, shall also stand closed.

21.04.2023
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No